

Montana Operations Manual Implementing a Reduction in Force

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Policy Purpose:

This policy establishes uniform agency procedures for conducting a reduction in work force in Montana state government.

Scope:

This policy covers all agencies employing employees who have attained permanent status in Montana's executive branch except those employed by the Montana university system and the Montana State Fund, the personal staff of elected officials, and any other position specifically excluded under Section 2-18-103 and 2-18-104, MCA.

If these policy provisions conflict with collective bargaining agreements, then the collective bargaining agreements take precedence.

Procedures:

When a reduction in work force is necessary, agency managers shall consider the programs they administer and the staff structure that most efficiently accomplishes the agency's program objectives. Agency managers shall consider employees' skills, qualifications (including performance), and length of continuous service, among other factors, when making reduction in work force decisions.

Agency managers must provide laid-off employees with the required notice, benefits and reinstatement rights, as provided in this policy and by law.

A. Skill Assessment:

Agency managers shall first assess the skills and qualifications (including past performance) of employees when making reduction decisions. When making reduction in force decisions, managers should consider the following in relation to the remaining positions:

1. employees' qualifications and experience in performing the duties of the remaining positions;
2. employees' qualifications and experience that benefit the agency's future goals and objectives;
3. employees' skills to perform the specific tasks assigned to the retained position; and
4. employees' performance history.

B. Length of Service:

If the skills assessment does not adequately distinguish between employees, agency managers shall then consider the employees' continuous length of service to make the decision.

C. Veterans' Preference: During a reduction in force, agency managers shall apply veterans' employment preference according to the provisions of 39-29-111, MCA and ARM 2.21.3623. Veterans' preference does not apply to a position covered by a collective bargaining agreement.

D. Employee Notice: Agency managers shall provide notice to the employee and/or the employee's collective bargaining agent as soon as possible and with written notice as follows:

1. at least 60 days in advance when 25 or more employees are affected; or
2. at least 14 days in advance when fewer than 25 employees are affected (2-18-1206, MCA).

Collective bargaining agreements may contain greater notice requirements and will supersede the above notice requirements.

E. Lay Off or Leave Without Pay: When agency managers anticipate the reduction will be more than 15 working days, they shall lay off the affected employees through a reduction in force. If they anticipate the reduction will last 15 working days or less, they shall place the employees in a leave without pay status.

F. Prohibitions: Agency managers may not use a reduction in force as an alternative to discharging an employee for cause or for other disciplinary purpose. Agencies shall refer to the Disciplinary Handling Policy when disciplining or terminating employees for cause (MOM 03-0130).

G. Employee Benefits: An employee who is laid off because of a reduction in force may choose either:

1. retirement benefits provided in statute at 19-2-706, MCA, if eligible; or
2. State Employee Protection Act benefits provided in statute at 12-18-1201 et seq., MCA.

Retirement Benefits: A laid-off employee who chooses the retirement benefits must be eligible for normal or early retirement as a member of the public employees', game wardens' and peace officers', sheriffs', firefighters' unified, or highway patrol officers' retirement systems.

The agency is required to contribute a portion of the total cost of up to three years of additional service that the laid-off employee is qualified to purchase (19-3-513, MCA). A laid-off employee may elect to pay the difference, if any, between the total actuarial cost and the agency contribution. If the employee does not pay the difference, the agency's contribution may not cover the total years of service the employee is eligible to purchase.

This benefit is subject to forfeiture if the employee returns to work for any state agency, including the university system, for 960 or more hours in a calendar year.

State Employee Protection Act Benefits: A laid-off employee who chooses State Employee Protection Act benefits is entitled to the following:

1. access to any job training and career development programs offered by the state provided the employee begins participation within one year after the employee's effective lay-off date;
2. inclusion in a special job registry for two years from the employee's effective lay-off date or the employee's completion of job training, whichever is later; and
3. continuation of coverage by the state's group health insurance plan and of the agency's contribution to the employee's insurance premium for six months from the employee's effective lay-off date or until the employee becomes employed, whichever occurs first.

Additionally, a laid-off employee who chooses State Employee Protection Act benefits and who is subsequently transferred to a different position in any state agency is also entitled to:

1. the same hourly pay rate as previously received if the new position is in the same occupation and pay band or a higher pay band than the position the employee previously held;
2. retain all accrued sick leave credits. The credits are not transferred when an employee accepts temporary or short-term employment in another state agency;
3. retain annual leave credits, cash out annual leave credits, or use accrued leave credits to extend the employee's layoff date. The credits are not transferred when an employee accepts temporary or short-term employment in another state agency; and
4. relocation expenses as provided in the hiring agency's policy.

A laid-off employee who elects to retain sick leave, annual leave or both may subsequently submit a written request to cash out the leave at any time during the one-year reinstatement period or the State Employee Protection Act benefit period. At the end of the State Employee Protection Act benefit period, provided the employee elected these benefits, agency managers must cash out all leave balances and effectively terminate the employment relationship.

Montana state government may elect to provide severance pay and a retraining allowance to laid off employees (2-18-622, MCA). Severance pay and retraining allowances are mandatory subjects of bargaining in

work units covered by collective bargaining agreements.

H. Job Registry:

The State Human Resources Division administers the job registry. A laid-off employee who chooses to participate in the job registry must complete the Job Registry Participant Information Form and a State of Montana Employment Application and email to the Job Registry. Agency managers are encouraged to consider laid-off employees included in the job registry before recruiting from the public.

If a laid-off employee is hired from the job registry, the employee's years of continuous employment up to the effective lay-off date must be restored. The employee is reemployed with permanent status and will not be required to serve the qualifying period for use of annual and sick leave. Any leave the employee elected to retain transfers to the hiring agency.

A laid-off employee who accepts permanent employment at a lower hourly salary or who accepts seasonal, temporary, or short-term employment may continue participation in the job registry. An employee's eligibility to participate in the job registry ends when:

1. the employee secures employment with an hourly salary equal to or higher than the position from which the employee was laid off;
2. an employee notifies the State Human Resources Division in writing that he or she no longer wishes to participate; or
3. two years have elapsed, either since the employee's effective date of lay-off or since the date of the employee's completion of job training whichever is later (2-18-1203, MCA).

The public employment hiring preferences for veterans, persons with disabilities, and American Indians do not apply when agencies consider participants from the job registry, because it is not an initial hiring (39-30-103, MCA).

When an agency hires a job registry participant, the agency shall notify the State Human Resources Division.

I. Reinstatement:

Agency managers shall offer reinstatement to the laid-off employee if the same position or a position in the same occupation in the employing agency becomes available within one year of the employee's lay-off date. Agency managers shall offer reinstatement on a "last-out, first-in" basis within an occupation.

A reinstatement offer must be made in writing and contain the response requirements and the consequences of failure to respond. The laid off employee has five working days to accept or reject the reinstatement offer. The employee shall respond in writing. If the employee rejects or fails to respond to a reinstatement offer, the employee loses all rights to:

1. the employment offered;
2. compete in internal recruitment efforts;
3. reinstatement; and
4. longevity restoration.

A laid-off employee who accepts a permanent, seasonal, or temporary position in another state agency, does not forfeit their right to reinstatement to the original position with the agency that laid off the employee.

An employee affected by a reduction in force may compete for a position as an internal applicant in the original employing agency for one year from the employee's effective lay-off date. The agency is not required to offer the position internally if the agency's policy or usual practice would not require it.

If a laid-off employee is reinstated within one year, the employee's years of continuous employment up to the effective lay-off date must be restored. The employee is reinstated with permanent status if the employee had attained permanent status prior to the layoff date.

Resources:

The State Human Resources Division publishes a Reduction in Work Force Guide. The guide is available at <http://hr.mt.gov/hrpp/policiesguides.mcpix>.

The job registry is on the MINE page under Personnel/HR Officer Resources: <http://mine.mt.gov/personnel/officers/default.mcpix>.

Job Registry email is jobregistry@mt.gov

Job Registry forms and documents are at located at <http://hr.mt.gov/hrpp/policiesguides.mcpix> under the Reduction in Work Force guide.

Definitions:

For the purposes of this policy, the following definitions apply:

Effective lay-off date – is the date agency managers determine will be the last day of work for an employee.

Job Registry - a special job registry from which all agencies may attempt to hire laid-off employees prior to seeking applications from the general public.

Reduction in work force – a management action taken for non-disciplinary reasons in which an employee is laid-off from employment. The reduction may take place for reasons including, but not limited to:

elimination of programs, reduction in FTE, lack of work, lack of funds, expiration of grants, reorganization of an agency, or privatization of a service traditionally provided by an employee of a department.

Reinstatement Period – is one year from the effective date of layoff.

Termination Date – is the date the laid-off employee is no longer eligible for reinstatement or to benefits provided under the State Employee Protection Act. The termination is considered a break in continuous employment, as defined in 2-18-601(4), MCA, for purposes of longevity, sick leave and annual leave, and therefore ends permanent status.

Work Days – are the days on which the position in question is regularly scheduled to work.

Additional definitions can be found under 2-18-1202, MCA.